THE HON'BLE SRI JUSTICE D. APPA RAO

W.P. No. 14532 of 2001

Dated: 02.08.2006

Between:-

P.Samba Reddy

..Petitioner

And

1. The Deputy Chief Mining Engineer,
   SMG-I, Incline, Singareni Collieries Co. Ltd.,
   Mandamarri, Kalkam Khani and others.

..Respondents.

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ORDER:

The petitioner seeks a Writ of Mandamus declaring the action of the respondents in recovering amounts due from out of his salary as illegal.

2. The case of the petitioner is that he has been working as Hauler Operator in R-1-Company. By virtue of his employment, he is a member of R-3-Co-operative Society. Earlier in 1989, he borrowed amounts from R-3 and repaid the entire amount in 36 monthly equal instalments. He again applied for a loan during the year 1995. Though he submitted all the papers, the amount was not disbursed and paid. Later he came to learn that the President, Secretary and Treasurer of the Society, with the help of the then Manager of the Branch, misappropriated funds of R-3 to a tune of Rs.1.7 crores. The said Society was taken over by Special Officer and an enquiry was ordered by the then District Collector, Adilabad District. While the enquiry was in progress, he gave evidence deposing that he did not draw any amount nor any loan was granted to him. He learnt that the Enquiry Officer submitted a report stating that the office bearers of R-3 were guilty of misappropriation. They misappropriated the amounts without disbursing the loan amounts. On a report, the police registered a case in Crime No.38 of 2001 against those office bearers and the case is pending. In the mean time, R-1 issued the impugned notice dated 17-05-2001 directing him to pay Rs.51,120/- towards the alleged loan drawn by him and proposed to deduct the same in

monthly instalments from his salary. Aggrieved by the said notice, he filed this writ petition questioning the propriety in issuing the said notice.

3. The petitioner alleges that he did not borrow any amount from R-3. For the misappropriation committed by the office bearers, he cannot be penalized.

4. In spite of the fact that notices were being served on the respondents, none of them chose to file any counter refuting the averments made by the petitioner. They did not controvert any of the allegations made by the petitioner.

5. In the light of un-controverted statement of the petitioner, it must be held that the petitioner was not paid any loan, which R-3 intends to recover. However, it may be stated that there was no enquiry conducted as to the alleged loan drawn by the petitioner. R-1, who has issued notice, should have invited objections from the petitioner and only on satisfaction that the amount was disbursed to the petitioner, such proceedings could have been initiated. More so, when an enquiry was held in regard to these loans and held that there was misappropriation by the Society. Without any enquiry whatsoever, directing the petitioner to pay or in the alternative, directing the Disbursing Officer to remit the amount by way of instalments from out of his salary would be unjust.

6. In the circumstances, R-1 is directed to receive representation from the writ petitioner within a period of one month from the date of this order and on such representation, R-1 shall make enquiry as to the alleged debt due by him. If on enquiry, R-1 finds out that the petitioner is indebted, it can collect the amount. The exercise of the enquiry shall be completed within six months

from the date of this order.

7. Accordingly, the Writ Petition is disposed of with the above said direction. No costs.

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August 2, 2006

KVR